S.B. Civil Writ Petition No.3986/2000

Mohan Singh Rathore Vs. State & Ors.

Date of Order : 10/05/2006

Hon'ble Mr. Justice Ajay Rastogi

Mr. Tanveer Ahmed, for petitioner
Mr. B.K. Sharma, Dy.G.A.

Petitioner got compassionate appointment on 2nd February, 1991 and he has been retired from service on attaining the age of superannuation by the respondents on 31st August, 2000. As alleged in the petition, his date of birth was 10th August, 1951 which has been altered by the respondents without affording opportunity and recorded as 10th August, 1942 [Ann.R/1] and taking his date of birth of 1942, he stood retired from service.

Counsel for petitioner submits that once his date of birth was duly recorded as 10th August, 1951 at the time when he entered in service, no alteration of the same was permitted under rules and that too without affording opportunity to him, such alteration/change in the date of birth duly recorded in Service Roll is violative of Article 14 of the Constitution and so also of principles of natural justice.

Respondents have filed reply to the writ petition wherein it has been averred that his date of birth is

10th August, 1942 which was recorded as per his Transfer Certificate Form made available to the department, copy of which has been placed before me and date of birth in his TC Form has been recorded as 10th August, 1942 even the Principal also issued Certificate Ann.R/3 wherein 10th August, 1942 has been certified based on school record. Taking note of date of birth which is duly supported by material and so also from school record, the authority considered to retire the petitioner on attaining the age of superannuation on 31st August, 2000.

Counsel submits that in view of material available on record the petitioner has failed to dispute as such no error has been committed in retiring the petitioner on attaining the age of superannuation as per his date of birth available on record dt.10th August, 1942. Counsel further submits that date of birth which has been furnished by the petitioner of 10th August, 1951 no material has been placed on record in support of it, whereas there is sufficient material to support his date of birth recorded in the Service Roll filed by the respondents of 10th August, 1942 and such disputed question of fact cannot be examined under the limited jurisdiction of this court under Article 226 of the Constitution and in view of cogent material available on record, in my opinion, no error has been committed by the respondents in taking decision to retire the petitioner on attaining the age of superannuation as per

his date of birth recorded as 10th August, 1942 which is duly supported by material on record.

Counsel further submits that the petitioner atleast be made entitled for benefits available under law for service which he has rendered in the office of respondents.

In my opinion, if such representation is submitted, the authority will consider the same for release of benefits which he is entitled for under law for the service rendered in their department.

Accordingly, the writ petition fails and is hereby dismissed.

[Ajay Rastogi],J.

FRB